

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Case No.: 1:13-cv-00210-SMV-RHS

DANNI SUTANA,

Plaintiff,

vs.

STATE OF NEW MEXICO, ECONOMIC DEVELOPMENT DEPARTMENT;
JONATHAN (“JON”) BARELA, individually and in his official capacity;
BARBARA G. BRAZIL, individually and in her official capacity;
WADE JACKSON, individually and in his official capacity;

Defendants.

MOTION TO AMEND OR SUPPLEMENT COMPLAINT

COMES NOW the Plaintiff by and through their counsel, the New Mexico Firm, LLC, [Nathaniel V. Thompkins] and pursuant to Fed. Rules Civ. Proc. Rule 15 and Local Rule 15.1 – Amended and Supplemental Pleadings, move this Honorable Court for leave to amend or supplement the Second Amended Complaint to read as the Third Amended Complaint, attached hereto as Exhibit A. As grounds for this motion, Plaintiff states that since the filing of the initial complaint, new facts about the Defendants’ conduct have emerged, and Plaintiff states that justice requires that this Court allow the Motion to Amend.

On March 5, 2013, this case was removed from the First Judicial District Court to the Federal District Court for the District of New Mexico. Since the removal no Joint Scheduling Order (“JSR”) has been entered and no Initial Scheduling Order has been entered.

Plaintiff made a good faith attempt to determine if this Motion is opposed by e-mailing both a copy of the Motion and the proposed Third Amended

Complaint, which is attached hereto as Exhibit A, to Defendant's counsel on March 16, 2013. On March 20, 2013, counsel's assistant e-mailed a reply that counsel was still reviewing the Motion. Counsel for Plaintiff is therefore in compliance with LR 7.1(a) of the local rules of civil procedure.

For reference, Plaintiffs attach a copy of the Third Amended Complaint as Exhibit A.

LEGAL ARGUMENT

As held in *De Franco v. U.S.* 18 F.R.D. 156, 159-60 (S.D. CA 1955):

"The general purpose of the Federal Rules of Civil Procedure is to see that actions are tried on the merits, and to dispense with technical procedural problems. To fall back on a technicality and refuse to permit a case to come to issue on the merits is to sap the very heart out of the rules and to obviate the very purpose for which they are intended.³ In giving effect to this purpose, amendments pursuant to ***Rule 15, of Fed Rules Civ. Proc., Title 28 U.S.C.A. should be freely allowed avoiding delay or complete frustration of a determination of the case on the merits. Rule 15 provides and, placing substance over form, the courts have with increasing liberality allowed amendments to the pleadings when justice so requires.***"

CONCLUSION

For all the foregoing reasons, Plaintiff request that this Court issue an Order granting the instant Motion and allow Plaintiffs to file their Third Amended Complaint which is attached hereto as Exhibit A.

Respectfully Submitted:

/s/ Nathaniel V. Thompkins
Nathaniel V. Thompkins
NEW MEXICO FIRM, LLC
103 N. St. Francis Drive, Unit A
Santa Fe, NM 87501
Phone: (505) 988-9750
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on 21st day of March, 2013, a copy of the foregoing Motion was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system (or CMECF) to:

M. KAREN KILGORE
Attorneys for Defendants
Post Office Box 4160
Santa Fe, New Mexico 87502-4160
(505) 988-4476
kkilgore@cuddymccarthy.com

/s/ Nathaniel V. Thompkins
Nathaniel V. Thompkins